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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,668	11/13/2001	Patrick W. Giralдин	8591-103	8492

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DUCKOR SPRADLING METZGER & WYNNE
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SAN DIEGO, CA 92103

EXAMINER

PIZIALI, JEFFREY J

ART UNIT	PAPER NUMBER
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2629

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07/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/992,668	Applicant(s) GIRALDIN ET AL.	
	Examiner Jeff Piziali	Art Unit 2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/6/07, 12/13/06, and 3/14/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/14/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicants' election with traverse of Species I (i.e., claims 4-40) in the reply filed on 13 December 2006 is acknowledged. The traversal is on the ground(s) that, "*Applicant believes that the two species are directed to similar and closely related subject matter, and that no separate search need be required*" (see Pages 1-2 of the 'Reply' filed 13 December 2006).

This is not found persuasive because:

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics (i.e., *separately tracking group members only as needed/requested within the environment* versus *separately tracking group members via continuous monitoring*) of such species. In addition, these species are not obvious variants of each other based on the current record. Furthermore, the species are independent or distinct because the species do not overlap in scope, i.e., are mutually exclusive; the species are not obvious variants; and the species each have a materially different design, mode of operation, function, and effect.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

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The requirement is still deemed proper and is therefore made FINAL.

2. No pending claims are presently withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicants timely traversed the restriction (election) requirement in the reply filed on 13 December 2006.

3. Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. The term "long range identification tag" in independent claims 14, 15, 27, 39, and 40 is a relative term which renders the claims indefinite. The term "long range identification tag" is not

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defined by any of the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It would be unclear to one having ordinary skill in the art precisely what distance distinguishes a "long range identification tag" from a "short range identification tag" (for example). Is "ten feet" considered "long range"? One hundred yards? Twenty miles? Such claim language renders the real-time tracking range of the instant invention indefinite.

7. Independent claim 14 is further rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are between the claimed subject matter of "each tag having a unique serial number" (see line 6) and the claimed subject matter of "providing information indicative of said unique serial number" (see line 12). It would be unclear to one having ordinary skill in the art whether the monitoring sites communicate information indicative of a single unique serial number, or rather communicate information indicative of a plurality of unique serial numbers. Such claim language renders the use of one or more serial number(s) of the instant invention indefinite.

8. Independent claim 14 recites the limitation "said requesting members" in lines 19-20. There is insufficient antecedent basis for this limitation in the claim. Line 17 of claim 14 recites "a [singular] requesting member." However, no antecedent basis for a plurality of "requesting members" has been claimed. It would be unclear to one having ordinary skill in the art whether

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there is/are one or more "requesting member(s)" activating the claimed identification stations.

Such claim language renders the identification station activation process of the instant invention indefinite.

9. Independent claim 14 recites the limitation "the relative location of members of the group" in line 29. There is insufficient antecedent basis for this limitation in the claim. Lines 1-4 of claim 14 recite "the location of a group of members... [and] the location of any other members of the group" (subject matter also lacking sufficient antecedent basis). However, in particular, no antecedent basis for a plurality of "the relative location of members of the group" has been claimed. It would be unclear to one having ordinary skill in the art whether "the relative location of members of the group" refers the *group's location* or rather refers to *any other members' location(s)*. Such claim language renders the instant invention indefinite as to whether it tracks a single group's location, a single member's location, or a plurality of members' locations. Furthermore, it is indefinite what such location(s) is/are relative to.

10. Independent claim 15 recites the limitation "said requesting members" in line 16. There is insufficient antecedent basis for this limitation in the claim. It would be unclear to one having ordinary skill in the art whether there is/are one or more "requesting member(s)" activating the claimed identification stations. Such claim language renders the identification station activation process of the instant invention indefinite.

11. Independent claim 15 recites the limitation "the relative locations of the members of the group" in lines 23-24. There is insufficient antecedent basis for this limitation in the claim.

Lines 1-2 of claim 15 recite "the location of a group of members," line 14 recites "the location of members of the group," and line 19 recites "the location of a plurality of the group members" (subject matter also lacking sufficient antecedent basis). However, in particular, no antecedent basis for a plurality of "the relative locations of the members of the group" has been claimed. It would be unclear to one having ordinary skill in the art whether "the relative location of the members of the group" refers to the *group's location* or rather refers to *the group members' location(s)*. Such claim language renders the instant invention indefinite as to whether it tracks a single group's location, a single member's location, or a plurality of members' locations. Furthermore, it is indefinite what such location(s) is/are relative to.

12. Independent claim 27 is further rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are between the claimed subject matter of "a group of members" (see line 2) and the claimed subject matter of "members of a group" (see line 4). It would be unclear to one having ordinary skill in the art whether one or more group(s) being claimed. Is the claim referring to the same group, or to two different and distinct groups. Such claim language renders the tracking of one or more group(s) of the instant invention indefinite.

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13. Independent claim 27 recites the limitation "said defined area" in lines 10-11. There is insufficient antecedent basis for this limitation in the claim. Such claim language renders the continuous location information determination process of the instant invention indefinite.

14. Independent claim 27 recites the limitation "the relative locations of the members of the group" in lines 21-22. There is insufficient antecedent basis for this limitation in the claim. Lines 1-2 of claim 27 recites "the location of a group of members," and lines 13-14 recite "the location of members of the group" (subject matter also lacking sufficient antecedent basis). However, in particular, no antecedent basis for a plurality of "the relative locations of the members of the group" has been claimed. It would be unclear to one having ordinary skill in the art whether "the relative location of the members of the group" refers the *group's location* or rather refers to *the group members' location(s)*. Such claim language renders the instant invention indefinite as to whether it tracks a single group's location, a single member's location, or a plurality of members' locations. Furthermore, it is indefinite what such location(s) is/are relative to.

15. Independent claim 39 recites the limitation "said requesting member" in lines 14-15. There is insufficient antecedent basis for this limitation in the claim. Such claim language renders the identification station activation process of the instant invention indefinite.

16. Independent claim 39 recites the limitation "the relative locations of the group members" in line 23. There is insufficient antecedent basis for this limitation in the claim. Lines 1-2 of

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claim 39 recite "the location of a group of members," line 13 recites "the location of members of the group," and line 19 recites "the location of a plurality of the group members" (subject matter also lacking sufficient antecedent basis). However, in particular, no antecedent basis for a plurality of "the relative locations of the group members" has been claimed. It would be unclear to one having ordinary skill in the art whether "the relative location of the members of the group" refers the *group's location* or rather refers to *the group members' location(s)*. Such claim language renders the instant invention indefinite as to whether it tracks a single group's location, a single member's location, or a plurality of members' locations. Furthermore, it is indefinite what such location(s) is/are relative to.

17. Independent claim 40 recites the limitation "the defined area" in line 8. There is insufficient antecedent basis for this limitation in the claim. Such claim language renders the map display and indication process of the instant invention indefinite.

18. Independent claim 40 recites the limitation "the relative locations of the group members" in line 12. There is insufficient antecedent basis for this limitation in the claim. Lines 1-2 of claim 40 recite "the location of a group of members" (subject matter also lacking sufficient antecedent basis). However, in particular, no antecedent basis for a plurality of "the relative locations of the group members" has been claimed. It would be unclear to one having ordinary skill in the art whether "the relative location of members of the group" refers the *group's location* or rather refers to *group members' location(s)*. Such claim language renders the instant invention indefinite as to whether it tracks a single group's location, a single member's location, or a

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plurality of members' locations. Furthermore, it is indefinite what such location(s) is/are relative to.

19. Remaining claims 4-13, 16-26, and 28-38 are rejected under 35 U.S.C. 112, second paragraph, as being dependent upon rejected base claims.

Response to Arguments

20. Applicants' arguments with respect to claims 4-40 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

21. Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff Piziali whose telephone number is (571) 272-7678. The examiner can normally be reached on Monday - Friday (6:30AM - 3PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bipin Shalwala can be reached on (571) 272-7681. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jeff Piziali
19 June 2007